



Minerals Council of Australia

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Minerals Industry Seminar

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"TRADE REFORM THREATS TO MARKET ACCESS"

Presentation by

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[SLIDE 1]

Mr Chairman, ladies and gentlemen,

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It is difficult to conceive that international trade reform is a high public policy imperative for our industry. We export nearly one third of Australia's total exports of goods and services and we face virtually uninhibited global trade in minerals products.

Our industry is more externally integrated and more export market dependent than any other sector in Australia. We are, therefore, particularly sensitive to barriers to trade and investment both in the principal commodity and the industrially transformed product.

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Accordingly, we:

- support the World Trade Organization (WTO) rules based trading system and its efforts to further liberalise global trade and investment;
- oppose the introduction of non-tariff trade related measures as substitute for reforms of traditional tariffs; and
- oppose the re-instrumentation of non-trade concerns, such as environmental and social, for trade restrictive outcomes.

In this, we are focussed in four key areas.

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First, reforms to the traditional barriers to trade – border restrictions and subsidies.

The eight preceding rounds of multilateral trade negotiations have delivered significant reductions in average industrial tariffs. The global trade weighted average on industrial tariffs is in the order of 3.6 per cent. About 85 per cent of world trade is bound at tariffs under 5 per cent.

Notwithstanding, substantial barriers and distortions to trade remain in some markets.

These are more generally through entrenched tariff escalation where tariffs increase as the raw material is processed. This is compounded by the "wriggle room" in the general, or "aggregate tariff reduction formula", which allows countries to meet their tariff reduction commitments on already low tariffs and minimise cuts on sensitive items with high tariffs, especially on industrially processed products.

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Second, there exists non-tariff barriers to trade in the form of institutional, regulatory and legal impediments in importing countries. These barriers, though inefficient and costly, are not insurmountable with focus on trade facilitation and trade efficiency.

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Third, investment. Though there now exists a comprehensive and uniform body of multilateral rules governing international trade, cross-border investment remains subject to a patchwork of rules. These are contained in many bilateral investment treaties, other commercial accords and a few WTO Agreements.

Access to global capital is a fundamental imperative for our industry. The Australian industry is small (\$US 46 billion market cap) in the global industry (approx. \$US 300 billion), which itself barely exceeds the market capitalisation of the GE and Microsoft Corporations.

Investment, in "brownfields" and in new major projects, in Australia is estimated to be around \$A 25 billion (*Access Economics*) this year. Australian capital markets simply don't have sufficient liquidity to cater for Australia's capital requirements.

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Fourth, the introduction of trade related measures to restrict trade for environmental, labour or other non-trade objectives stands as the greatest threat to the integrity of the rules based world trade system and our unfettered access to markets.

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My purpose here today is to address the threats to market access from an intersection between trade and environment policy, for we fear this is where the minerals industry's greatest exposure lies.

These are those who seek coercion in the form of trade sanctions, or restrictive measures beyond a country's general obligations, for non-trade social and environmental objectives that are inconsistent with WTO principles and agreements.

This is an emerging threat to the integrity of the world trading system.

Such restrictive measures would affect trade by allowing exporters to adopt the importing countries' social and environmental standards. This, both of the product and the way in which it is produced and processed in the country of origin.

Those seeking such measures advocate profound changes to WTO rules allowing countries to restrict imports if the way those products are made, ie. processed and produced in the country of origin, do not meet the importing countries' domestic environmental standards, or do not meet their expectations of how other countries should manage their environmental, social or other non-trade specific considerations.

Further, they also advocate that existing trade sanctions in United Nations Multilateral Environment Agreements (MEAs) should not be challenged in the WTO.

This then becomes the neo-classical protectionism.

As the traditional barriers to trade are reduced, the fortress mentality shifts to other means to give effect to protection of globally inefficient industries. Or, in effect, to neutralise the cost disadvantages of their internal policies and/or standards.

If they can externalise their domestic comparative disadvantage to the competitive disadvantage of exporting countries, they are able to compensate for the loss of competitiveness which is, invariably, self inflicted. It results from measures specific to their own environmental and/or social circumstances, usually the result of domestic political and socio-economic pressures.

In practical terms, it would not be unreasonable to expect such a scenario where foreign countries could restrict Australian imports of wheat or other agricultural products because of the salinised Murray Darling basin.

We could find a range of products restricted because of foreign powers' interpretation of our social and Indigenous relations policies.

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And, from the minerals industry perspective, it is not unreasonable to expect that reclamation and rehabilitation, biodiversity, and other environmental management stipulations become a condition of trade.

It is a new form of extra-territorialism imposed without legal redress, or due and proper regard for the sovereignty of the exporting nation state. It would compromise WTO rules in that the WTO respects the principle of national sovereignty.

Before you dismiss this as fanciful, look to global trade policy developments, albeit in a range of different manifestations.

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In this, one automatically turns to Europe, for they are unquestionably the 'leaders of the pack'.

The EU's platform for the inclusion of non-trade concerns, specifically environmental objectives, in trade agreements and regulations that could restrict trade, is comprehensive.

The EU:

- are the principal *demandeurs* for changes to WTO rules I referred to, ie. to permit trade restrictions to protect the environment of the country of origin;
- are pursuing WTO comparable standing for UN Multilateral Environment Agreements, which do contain such trade restrictive measures;
- is unilaterally instigating policies or regulations which give rise to trade restrictions;

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- is developing a capability for import preferences for certified sustainable development products through their General System of Preferences [tariff];
- has developed a Green Paper which sets out the goal of making producers responsible for their products for the whole of their life cycle on an "extended producer responsibility" basis;
- is enthusiastically promoting their proposed new chemicals policy for the authorisation and registration of chemicals as a model for a harmonised, global chemicals management system; and
- are enthusiastically committed to the Kyoto Protocol which has little to do with managing climate change and more to do with the EU's global trade and economic policy agenda.

I will address each briefly.

The EU's Trade and Environment Agenda in the WTO ...

The WTO already makes significant provision for importing countries to address the environmental impacts of trade.

Non-trade concerns already figure prominently in WTO Agreements [*vis* GATT Article XX, Sanitary and Phyto-Sanitary (SPS) and Technical Barriers to Trade (TBT) Agreements].

The existing WTO rules provide an adequate framework within which the WTO and multilateral environment agreements (MEAs) can coexist. And, the current case-by-case approach to problem solving is generally working.

The WTO does give signatory countries significant latitude to restrict trade where the imported product endangers the environment of the importing country and not the country of export origin.

The WTO allows countries to use quarantine measures to restrict imports, but limited only to action to protect the health and safety of people, or plants or animals, when it is established in sound science, or recognised standards that there are legitimate risks.

Where mandated regulations are invoked as technical barriers to trade, they must be based on sound science. Sound science is the foundation to proper risk analysis and risk management in decision making in trade matters affecting the environment, product safety, and public, animal and plant health.

The WTO rules provide that any restrictions in international trade should be material, ie. based on the physical characteristics of products, not according to the way they are processed. This ensures respect for the principle of non-discrimination and denies the basis for the country of import to coerce another (as a condition of market access) to alter its domestic policies, including environmental standards, as they apply in the country of the product's origin.

It is this provision, in particular, that draws constant criticism by many NGO activists and green groups, and broadly shared by Europeans and some other countries.

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Ambit claim or not, the Europeans, together with Norway and Japan, sought a specific and detailed mandate to change the WTO rules in the Doha Declaration [*vis*:

- the relationship between WTO and UN Multilateral Environment Agreements (MEAs) to be codified to ensure that "environmental measures are mutually supportive" [which is code for ensuring discriminatory trade provisions in these Agreements are protected];
- that the "precautionary principle" be legally binding and include the recognition of "other legitimate factors", ie. outside of sound science; and
- that the life cycle assessment and labelling of environmental impacts of goods in their production, use and disposal be mandated.]

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It is history that the *demandeurs* of a negotiating mandate fell short of their objectives, but their persistence was rewarded in that the Declaration provided for negotiations on:

- the relationship between existing WTO rules and specific trade obligations in Multilateral Environment Agreements (MEAs), albeit limited in scope to the applicability of such WTO rules to the parties to the MEA in question, and the negotiations shall not prejudice the WTO rights of any member not a party to that MEA;
- the exchange of information between MEA Secretariats and relevant WTO Committees;
- reducing or eliminating barriers to trade in environmental goods and services; and
- clarify and improve WTO disciplines on fisheries subsidies.

The somewhat truncated negotiating agenda still provides the EU opportunity to pursue their objectives with the dogged persistence for which they are well renowned and respected.

The risks to the key foundation principles of the WTO trading system are real and profound.

Also, it is significant that there has been a proliferation of bilateral trade agreements as the multilateral WTO process struggles to advance the cause of trade reform.

There are now 200 bilateral and regional free trade agreements which have been notified to the WTO, since 1990, of which there have been 100 since 1995.

My fear of bilateral free trade agreements is not that they, in themselves, diminish the significance of the multilateral trade framework, provided each reinforces the other.

Rather, there is a significant risk that bilateral trade agreements give rise to adverse trade intersections with environment and other social policies that would simply be unachievable through the multilateral forum.

Without going into the detail of the Jordan, Chile, Singapore, NAFTA and, more recently, the Australia-US Free Trade Agreement, there is a disturbing trend towards overtly linking compliance with trade obligations with compliance with environmental obligations.

So, if you add the EU's persistence for changes to global trade rules to the proliferation of bilateral trade agreements already with trade restrictive provisions, there is increasing scope for arbitrary judgements in trade discriminating import preferences, and/or denying access, potentially to our's and other exporters' detriment.

Trade and environment was conspicuous by its absence in the WTO Cancun Ministerial Conference late last year. Indeed, the EU, by their own admission, "considered they were isolated, especially by developing countries."

They considered the legitimate right to exploit their comparative advantage in determining, in part, their competitive strength in international trade of goods and services was being threatened by the prospective imposition of developed economies' environmental standards and social policies.

Notwithstanding, the EU and partners are pursuing this agenda through other forums.

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EU Policy Unilateralism

According to a study by the Australian APEC Study Centre at Monash University, already, EU policy unilateralism has resulted in some 34 separate environmental regulations, which have, or potentially, given rise to trade restrictions, focused on areas which have been the subject of popular environmental campaigns and, from our industry's perspective, these regulations include:

- eliminate use of toxic substances – chemicals and heavy metals in particular;
- recycle waste and packaging;
- protect wildlife;
- the mandating of standards for levels of toxic substances in products (lead/uranium/nickel), set at low tolerance levels for toxicity and residues of proscribed substances;
- excessively stringent testing, labelling and certification requirements (base radiation in concentrates);
- whole of life cycle regulation (lead);
- specifying recycling measures (scrap metal).

As I alerted to earlier, these measures often affect trade by requiring importers to adopt domestic environmental measures as a condition of access to the market, or indeed bans.

They are applied unilaterally but, as I indicated, the EU is very capable of "externalising" their internal regulatory measures.

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A Sustainable Development Trade Agenda

Under the banner of a sustainable development agenda, the EU is focused on shifting consideration of trade and environment from the WTO to UN Multilateral Environment Agreements and to developing a capability for import preferences for certified sustainable development products through the EU's General System of Preferences [tariff].

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Green Paper on Integrated Product Policy

The EU's Green Paper on Integrated Product Policy sets the goal of making producers responsible for their products for the whole of their life cycle, what is often referred to as "cradle to grave", and "extended producer responsibility" (EPR).

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It is a far more draconian concept than materials stewardship.

We consider materials stewardship as a voluntary, commercially founded, integrated program of action that ensures products are produced, used and then managed at end-of-life in a socially and environmentally acceptable manner.

We consider it should cover all resources, processes and products. End-of-pipe remedies or controls are inadequate and inefficient in addressing adverse environmental and social impacts.

We consider that it is a management strategy. That all actors in the life cycle of a product share responsibility in the mitigation of negative environmental impacts and the enhancement of social/societal outcomes.

The extended producer responsibility concept, which had its origins in Europe in the 1990s, is a mandated system which transfers the onus of responsibility to the producer or brand owner. Thereby removing the concept of shared responsibility, and the role of the consumer whose behaviour is so critical to an integrated whole of chain approach.

EPR is contradictory to the principles of sustainable development.

The global sustainability debate has evolved to the point where businesses must consider the impact of products and services throughout life cycle and supply chains.

EPR is founded in "after the fact" remedial actions, not the integrated preventive systems approach we support. In so doing, EPR adversely impacts policies directed at sustainable use and re-use of the materials we produce.

To the extent that EPR imposes additional costs, it will put European operations that are industrially transforming our (and others) raw materials at a competitive disadvantage to countries undertaking similar processing operations. These countries are not saddled with the extra costs of take-back of products and by-products without the benefits of efficiencies gained through shared responsibility in the value chain.

Further, and rather ironically, if Europe's commitment to trade sanctions to give effect to improved global environmental performance/standards is to be believed, EPR stands to externalise the environmental impacts of such manufacturing operations to those countries who are prepared to compromise environmental standards for competitive advantage and economic gain.

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The Kyoto Protocol

Few argue the merit of an effective global solution to managing climate change founded in the real application of the Precautionary Principle as stated in the Principle No. 15 of the Rio Declaration (1992).

What is at contest is the Kyoto Protocol as the means to achieving the fundamental requirements of an effective global solution, and its trade discrimination subtext in favour of the EU in particular.

I have no doubt the Europeans would have a very different view about the merit of the Protocol if the time lines were substantially different, ie. a pre-1990 base period.

Consider an EU position if the Protocol did not make provision for that so-called "European bubble" where major emitters among the Mediterranean countries are offset by the credits of the Northern European countries. They could not then capitalise on the United Kingdom's shift from coal to gas and the closure of inefficient Eastern European coal fired power generators, both pre-1990.

Quite simply, the Protocol stands to disadvantage countries with a comparative advantage in energy, such as Australia, without any real effect in reducing emissions, given there is simply no path to including the other three major emitters (China, India and the USA) among the top six countries (USA, China, Russia, Japan, India, and the EU), accounting for around 73 percent of global emissions.

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European New Chemicals Policy (NCP)

This proposes comprehensive and ambitious reforms, the centrepiece of which is the new REACH system of chemical legislation and management - Registration, Evaluation and Authorisation of Chemicals - to replace 40 pieces of legislation and require producers and users of chemicals to be responsible for the provision of data and the assessment of risks to support their registration and authorisation for specific use. It follows a process of:

- registration for all EU producers and importers for products greater than 1 tonne for:
 - substances
 - preparations containing greater than 1 tonne of hazardous substance
 - minerals and concentrates/secondary raw material streams with greater than 1 tonne of hazardous substance [all concentrates and most, if not all, recyclables contain impurities which are hazardous, eg. arsenic, mercury, selenium, and cyanide]
- registration plus submit report on hazard assessment, effects assessment, risk assessment and risk management [Chemical Safety Report] for the above in quantities greater than 10 tonnes;
- authorisation - evaluation of data on specific chemicals if carcinogenic, mutagenic, and/or teratogenic (reprotox) [CMR] risks – authorisation provides permit for specific uses [market access permits for application];
- significantly, there is now no requirement for a persistent bio-accumulative and toxic substances (PBT's) evaluation for authorisation for metals, and it is now recognised that the current "organic" risk assessment methodologies don't fit for metals and there is a need to determine a risk assessment methodology for "in-organics".

This proposal brings EU chemicals registration practice into line with USA and Australian systems "in systems terms" in that industry is the source of the data on which regulatory authorities approve registration for particular uses.

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However, there are major differences in substance in the new policy proposal:

- extends the definition of chemical, and therefore the scope of the legislation, to minerals – raw materials (ores and ore concentrates), massives (pig iron, alumina), metal compounds (alloys) that are classified as hazardous, and secondary raw materials for recycling (recyclable materials) - produced or imported in quantities of more than 1 tonne;

[alloys are considered as products, but made of materials/substances that are required to be authorised, therefore alloys do not need to be registered, but their use does];
- will not cover "organics" to the extent it applies to "in-organics"-raw materials (polymers and intermediates) for plastics and detergents will not require registration if the risk of exposure to light-monomers is covered;
- will differentiate registration requirements on a quantitative basis rather than the toxicological or pathogenic nature of the chemical inc. exposure and risk levels;
- shifts the onus of responsibility for generating and assessing data to the producer-i.e. the burden of testing and the onus of proof for demonstrating safety and health (similar system to that of Aust. and US. and surrogate data will be submissible to the extent that it complies with EU requirements, but the data requirements of the US, Australia and Canadian systems don't come close to meeting EU requirements under this proposal);
- timing for registration is too restricted-timing for compounds in excess of 1000 tonnes is within 3 years - difficult to satisfy the data requirements within this period.

Despite global protest at the severity of the EU's new proposed chemicals policy, we can expect this legislation to come into effect some time in 2005 through 2008. The Dutch Presidency of the EU Commission will take the lead from this month on and it is widely considered in Europe that they are committed to this legislation.

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Specifically, I see the threats of the EU's New Chemicals Policy as:

- significant cost burden to the industry without demonstrable probable improvements in human health and safety or environmental protection;
- minerals/metals industry at a competitive disadvantage to directly substitutable products, ie. the organics;
- directly impact Australian producers' costs of doing business, and not just in the EU, for ores, massives, concentrates, metal products, because Australia, historically, and prospectively, relies on surrogate data from the EU and the US in establishing regulatory, community and environmental health standards;
- trade distortions to the extent that this new regime increases cost of doing business in the EU;
 - will distort trade in scrap metal and other recyclable minerals and metal products, creating disincentives to sustainability of metals which have a unique capacity for continual reuse
 - could envisage trade to EU more in the form of metal products produced offshore without the cumbersome and costly regulatory requirements of the EU system-this will distort industrial production in the EU which has been a large importer of ores and concentrates and then exporter of the product, eg. 50% of the world's nickel comes from EU and 30% is exported as stainless steel; and
- the EU is overtly promoting their new chemicals policy as a model for a harmonised global chemicals management system.

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SAICM and IFCS ...

The EU is using the current consideration of a global Strategic Approach to International Chemicals Management (SAICM) and the Intergovernmental Forum on Chemical Safety (IFCS) as platforms for the extension and internationalisation of their New Chemicals Policy.

The SAICM proposal comprises intergovernmental agencies involved with chemicals management and is designed to develop a strategy for all chemicals, not just hazardous chemicals.

Our interest not only lies in the merit of the underlying objectives to these global initiatives, but also because we see it as a drive for control of international chemicals activity, which in itself is not necessarily a bad thing if they get it right – adopting the EU's proposed New Chemicals Policy is a long way short of that goal.

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This, of course, goes to my point that the EU are masters at externalising aspects of their domestic agenda where that is likely to put them at a competitive disadvantage in the global market.

Conclusion

[SLIDE 25]

In conclusion, Mr Chairman,

- we reject the intersection of trade with environment with other social policies where these undermine the integrity of the WTO system, sponsors an alternative form of protectionism, imposes one country's environmental and social standards on another, and/or compromises the legitimate objectives of increased trade, protection of the environment and improved welfare of the workforce;
- it is critical to appreciate that international action to protect the environment or promote social responsibility does not have to depend on trade sanctions in any guise, indeed, the cause of either is compromised by the intersection with the other;
- restrictions in international trade should be material, not according to the way the product or even service is processed or produced. Any discrimination in trade should be based on the physical characteristics of the product, if the we are to maintain respect for the principle of non-discrimination;

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- international environment policies should respect national sovereignty and be based on sound science and pursued through international agreements negotiated for that purpose and based on those principles;
- there is real merit in driving for globally consistent systems provided they adopt a truly worldwide, integrated approach, capable of being adopted at a regional level; and
- globally consistent systems should not be confused with globally harmonised systems driven by some other country's domestic, political and international trade agenda, provided it is integrated with sustainable development principles, adopts the life cycle management approach, and is based on sound science.

That's our mantra, but we are not getting lost in the logic of our own argument in driving for its outcome.

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